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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,275	08/05/2003	Michael E. Woolford	3616.111USC4	7063
7590	06/24/2005		EXAMINER	
James A. Larson MERCHANT & GOULD P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			NEUDER, WILLIAM P	
			ART UNIT	PAPER NUMBER
			3672	

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/634,275	WOOLFORD, MICHAEL E.
	<b>Examiner</b>	<b>Art Unit</b>
	William P. Neuder	3672

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 29-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 29-34,36-41,44-56,58-63 and 66-72 is/are rejected.
- 7) Claim(s) 35,42,43,57,64 and 65 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/22/05</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-33,37-41,47-55,59-63 and 66-72 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Publication 59-167842.

The Publication discloses a mortar less retaining wall block 10a or 10b (figures 6 and 7). The block has a front surface 5 and a back surface 12 as well as a top surface 13,14 and first and second sides (unnumbered). Insets between the front and back surface (unnumbered) extend from the block body top to the block bottom. One 17a or more 17b protrusions are formed integral with the block body and a portion of each locator protrusion fits within an inset of a block in an adjacent row when a plurality of blocks are stacked to form a wall (figures 8 and 9). The protrusion has first forward facing surface 15b and a second rearward facing surface 16b. The block has a first front edge, a first rear edge, a first side edge and a second side edge opposed to the first side edge. The first front edge extends from the first side edge to the second side edge and the first rear edge extends from the first side edge to the second side edge. The side edges include converging portions that converge towards one another and are oriented at an oblique angle. The first front edge corresponds to the widest portion of the front surface. The block has a second front edge, a second rear edge that is

generally vertical, a top edge and a bottom edge opposite the top edge. The locator protrusions 17a, 17b project above the top edge. The bottom edge opposite the edge from which the protrusion extends is generally horizontal and lies on a straight line. As to claim 29, the inset portion has a forward edge portion and a rearward edge portion. The forward edge portion being spaced from the rearward edge portion and being positioned closer to the front edge than is the rearward edge portion. The protrusion has forward most and rearward most edges. The maximum front-to-back dimension between the forward most and rearward most edge of the protrusion is smaller than the maximum front-to-back dimension between the forward and rearward edge portions of the inset. The protrusions of blocks in adjacent blocks in adjacent courses contact each other in a shear-resisting manner in which interference the protrusions and insets resists the tendency of the block in the upper course to slide forwardly in response to forces exerted on the block by the retained wall. As to claims 30 and 52, the protrusions and insets are sized and shaped to permit the construction of serpentine walls (figure 9). As to claims 31 and 53, the block body has an opposed pair of legs extending from the first and second sides. As to claims 32 and 54, two protrusions 17b are provided. As to claims 33 and 55, a single protrusion 17a can be provided. As to claims 37,38,59 and 60, the first front edge is a single generally straight segment (figure 6). As to claims 39-41 and 61-63, the first front edge comprises a generally straight multiple segment (3 in figure 7). As to claim 47, the entire bottom edge generally lies on a straight line. As to claims 48 and 69, the locator protrusions have curved sides 15b, 16b configured to contact an inset in a block in an adjacent course of blocks. As to

claims 49 and 70, the forward edge portions of the insets are generally parallel to at least a portion of the front edge. As to claims 50 and 71, the first and second converging portions extend between the first front side edge and the forward edge portions of the inset portions of the first and second side edges. As to claim 72, the first and second side edges include converging portions that converge towards one another and are oriented at an oblique angle.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 34 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Publication 59-167842 in view of New Zealand 92167.

The Japanese Publication is considered to disclose all of the claimed features except for the shape of the protrusion claimed in claims 34 and 56. The New Zealand Patent discloses protrusions having the claimed shape of two lobes 14 joined by a

narrower portion. It would have been considered obvious to form the protrusions of the Japanese Publication in the shape disclosed in the New Zealand Patent because the shape of the protrusion in the New Zealand Patent provides a projection having a more secure engagement with blocks in adjacent rows.

Claims 36 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Publication 59-167842 in view of US Patent No. 4920712.

The Japanese Publication is considered to teach all of the claimed features except for the block having an open core. The US Patent teaches that it is old and well known to form blocks having open cores. It would have been obvious to form the block of the Japanese Publication to have an open core as taught by 4920712 because it is known to form blocks with open cores to reduce weight and provide cavities for fill.

Claims 44-46 and 66-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Publication 59-167842 in view of D299067.

The Japanese Publication discloses all of the claimed features except for the face having a decorative feature. D299067 discloses that it is old and well known to form the face of a retaining wall block having a decorative feature (see figure 1). The decorative feature being comprises a roughening of the block wherein the roughening is a result of a block-splitting process. It would have been considered obvious to form the face of the retaining wall block having a decorative feature as taught by D299067 since the use of a decorative feature makes the retaining wall more appealing to the eye.

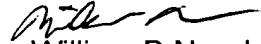
***Allowable Subject Matter***

Claims 35,42,43,57,64 and 65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Neuder whose telephone number is 571-272-7032. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Bagnell can be reached on 571-272-6999. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
William P Neuder  
Primary Examiner  
Art Unit 3672

W.P.N.